

Department of
Conservation and
Development

**Contra
Costa
County**

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December 14, 2016

State Water Resources Control Board
Attention: Jeanine Townsend, Clerk to the Board
1001 I Street, 24th Floor
Sacramento, CA 95814-0100

Re: Initial Comments on Draft Revised SED on proposed updates to WQCP for Bay-Delta Estuary

Dear Board members,

Contra Costa County is reviewing the draft revised Substitute Environmental Document (SED) on proposed updates to the Water Quality Control Plan (WQCP) for San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). The draft revised SED was released to the public by the State Water Resources Control Board (SWRCB or State Board) on September 15, 2016.

The State Board's proposed updates include:

- a new and revised SJ River flow objectives for protection of fish and wildlife beneficial uses;
- a revised salinity water quality objective for protection of the Delta agricultural beneficial uses; and,
- a program of implementation for those objectives.

Contra Costa County includes a large area of the Delta. The County borders on Old River to the east and Suisun and San Pablo Bays in the north. The County is the ninth most populous county in California, with more than one million residents. Many of our residents rely on the Delta for their municipal, industrial and irrigation water supplies, for their livelihood, and recreation.

Contra Costa County commends the Board members and staff for the hard work they have put in to develop the draft update. We support the State Board's proposal to restore river flows in the San Joaquin Valley to protect fish and wildlife, and supports setting minimum flow requirements as a percentage of unimpaired flow.

SWRCB Board Members

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However, Contra Costa County opposes the Board's proposal to degrade, rather than improve, water quality in the Delta by relaxing the April-August irrigation water quality standard in the South Delta.

The following are Contra Costa County's initial comments on the SED with a focus on general policy issues.

1. Require flow objectives for the upper San Joaquin River from Friant Dam to the Merced River confluence
2. Protect and improve South Delta water quality
3. Ensure impacts are not redirected to subsequent months
4. Ensure sufficient flows for San Joaquin fish downstream of Vernalis
5. Should not set San Joaquin flow objectives as four steps
6. Any voluntary settlement agreements must achieve the new flow and ecosystem objectives
7. The revised SED should discuss Areas of Concern and how they have been addressed

These issues are discussed in more detailed in the attachment to this letter. Contra Costa County plans to submit additional detailed comments by the January 17, 2017 deadline.

Thank you for your consideration of Contra Costa County's comments on the draft revised SED. Contra Costa County and Contra Costa County Water Agency remain willing and able to work with the SWRCB and Bay-Delta stakeholders on this important issue. If you have any questions, please contact me at (925) 674-7824, or Dr. Richard Denton, our Water Resources consultant, at (510) 339-3618.

Sincerely,



Ryan Hernandez
Manager

Contra Costa County Water Agency

Attachment: Contra Costa County's Detailed Initial Comments on Draft Revised Phase 1 SED

Cc: Board of Supervisors
John Kopchik, Director, Department of Conservation and Development
Maureen Toms, Conservation Planning Deputy Director

**Contra Costa County's
Detailed Initial Comments on Draft Revised Phase 1 SED**

The following are Contra Costa County's detailed initial comments on the SED with a focus on general policy issues.

1. Require flow objectives for the upper San Joaquin River from Friant Dam to the Merced River confluence

The SWRCB is only proposing to restore streamflows for three of the tributaries to the San Joaquin River. The most heavily impacted section of the San Joaquin River, the upper section below Friant Dam, is being ignored. This was a salmon-bearing river before Friant Dam was built.

This upper San Joaquin watershed contributes approximately 30% of the total unimpaired flow for the San Joaquin River. If the State Board only sets a flow objective of 40% of unimpaired flow on three of the four major sources of flow, the resulting flow at Vernalis will only be about 28% [*i.e.*, 70% of 40%] of total watershed unimpaired flow. This is much less than the 60% that the SWRCB determined in 2010 was necessary to restore and sustain fish populations on the San Joaquin.

In 2004, the Ninth Circuit Court of Appeals confirmed that Fish and Game Code section 5937¹ does apply to the San Joaquin River below Friant Dam. This led to a September 2006 settlement agreement between the parties and development of the San Joaquin River Restoration Program.

The SED assumes there will be Restoration Flows below Friant Dam that will contribute to flows in the Lower San Joaquin River. However, the Friant settlement agreement has failed to produce any significant sustained increase in flow upstream of the confluence with the Merced River (Stevinson) and we are concerned that any further progress on implementing the restoration flows could likely be blocked by the new federal administration and Congress.

Setting flow objectives for only three of the main sources of flow at Vernalis will make it difficult to achieve the 60% of unimpaired flow objective the SWRCB determined was necessary in 2010. At the very least, the Board should not relax the existing Vernalis flow requirements on the assumption that the new tributary flow objectives will provide the necessary flow enhancements at Vernalis.

¹ ***Fish and Game Code section 5937:*** The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.

Past State Boards' failure to require compliance with Fish and Game Code section 5937 below Friant Dam is also a problem because the SWRCB is likely to be asked in the future to make a decision on water rights permits for the Temperance Flat Reservoir. This new reservoir would be located on the Upper San Joaquin upstream of Millerton Lake (Friant Dam). Failure to set flow objectives for the upper San Joaquin could result in the present State Board "doubling down" on the mistakes of the past.

2. Protect and improve South Delta water quality

Despite the detailed discussions of antidegradation in Chapter 23, the SWRCB's proposed relaxation of the April-August irrigation EC standard from 0.7 to 1.0 dS/m will result in degradation of water quality in the south Delta. The proposed increases in tributary flows from February-June may result in improved water quality during that period, but not in the remaining months of the South Delta irrigation season, *i.e.*, July and August.

The 2009 Delta Reform Act established as new State policy achievement of the coequal goals of ecosystem restoration and improved water supply reliability. The Act also established as State policy the inherent objective of improving water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta (California Water Code section 85020(e)). Relaxing water quality objectives and thereby degrading water quality is therefore contrary to the policy of the State of California.

If the State Board really believes the increased flows will improve rather than degrade water quality for irrigation in the south Delta throughout April-August, then it is not necessary to relax the existing 0.7 dS/m standard.

3. Ensure impacts are not redirected to subsequent months

Adoption of the Spring X2 estuarine habitat standard (February-June) by the SWRCB in 1995, which was an outcome of the Bay-Delta Accord, unfortunately had the effect of significantly reducing Delta outflows and increasing X2 in the Fall. This unintended consequence may well have contributed to the subsequent Pelagic Organism Decline. To correct this redirection of adverse impacts, the U.S. Fish and Wildlife Service (USFWS) established Fall X2 limits in the 2008 OCAP Delta smelt biological opinion.

If the SWRCB only sets new flow regulations for February-June, this could result in a reduction in flows in July and subsequent months. Contra Costa County alerted the SWRCB to this potential problem in its December 6, 2010 comments on the San Joaquin River and South Delta Salinity Draft Technical Report.

The State Board should also set flow requirements for July-January to ensure existing flows are not decreased, and the new February-June flow objectives do not redirect adverse impacts on San Joaquin salmon and other key fish species to the July-January period.

4. Ensure sufficient flows for San Joaquin fish downstream of Vernalis

The draft revised SED is inadequate because it fails to ensure that flows to help outmigrating salmon and attract returning salmon are available all the way through the Delta to the San Francisco Bay. It is not enough to enhance flows and habitat for fish species upstream of Vernalis if outmigrating fish are left stranded in the south Delta, or worse still are drawn to the export pumps.

As part of the development of new Delta outflow standards in Phase II, the State Board should include contributions from the San Joaquin Valley, not just the Sacramento Valley. The contributions from the Sacramento Valley, San Joaquin Valley and east side streams could be based, in part, on the unimpaired flow contributions from each watershed. This would help create more natural flow patterns in the Delta.

This would require that the Vernalis flows reach all the way through the Delta to Suisun Bay, not just to the South Delta and rediverted at the South Delta export facilities.

The draft revised SED is also inadequate because it fails to analyze and disclose the environmental impacts and benefits of the proposed alternatives in the whole Delta and downstream. Flow modifications on the San Joaquin River and its tributaries could result in environmental benefits and adverse impacts throughout the Delta and San Francisco Bay.

The Plan Area described on page 1-1 of Chapter 1 of the draft revised SED artificially limits the SED analysis of environmental impacts to the San Joaquin Valley (except upstream of the confluence with the Merced River) and the southern Delta, including the SJR from Vernalis to Brandt Bridge, Middle River from Old River to Victoria Canal, and Old River/Grant Line Canal from the Head of Old River to West Canal. The Revised SED must also analyze, amongst other things, changes in the flows in Old and Middle River, changes in water quality at key municipal and industrial and agricultural intakes throughout the Delta, and the changes in Delta outflow and X2.

5. Should not set San Joaquin flow objectives as four steps

At this time, the SWRCB is only proposing to set flow standards for three of the tributaries for February through June. However, as discussed above, this only addresses a portion of the necessary enhancements to the flows along the entire length of the San Joaquin River to protect fish and wildlife and to restore the ecosystem of the Central Valley, Delta and San Francisco Bay.

At some time, preferably now as part of Parts I and II, the SWRCB will need to also:

- set flow requirements for the upper section of the San Joaquin River from Friant Dam to the confluence with the Merced River;

- set the San Joaquin Valley flows necessary for the San Joaquin watershed's contribution to Delta outflow (Phase II); and,
- set tributary and mainstem flow requirements for July-January.

Because this is a contentious issue, Contra Costa County recommends the SWRCB take care of all these flow requirements at one time as part of a combined Phase I and Phase II process, instead of in four steps. Internal Delta flows, such as Old and Middle River flow and Delta outflow and Delta water quality are all affected by the flows in the San Joaquin River. The current Phase I issues are not independent of Phase II issues.

6. Any voluntary settlement agreements must achieve the new flow and ecosystem objectives

Governor Brown's September 19, 2016 letter to SWRCB Chair Marcus urged the Board to move quickly to complete the remainder of their analysis on the Sacramento River basin. He suggested voluntary agreements could offer a faster, less contentious, and more durable outcome. Governor Brown asked the Board and staff to prioritize analysis and implementation of voluntary agreements. It is likely that settlement agreements will also be offered during Phase I.

However, the last three major Bay-Delta settlement agreements have all failed to achieve the flow or ecosystem restoration goals for which they were developed.

The **Vernalis Adaptive Management Plan (VAMP)** was a 12-year program, starting in 2000 that formalized the contributions of senior upstream water right holders to meet the SWRCB's flow objectives at Vernalis. The VAMP was unsuccessful because it failed to protect juvenile Chinook salmon migrating from the San Joaquin River through the Delta or double the population of anadromous fish. The flows during the VAMP were less than the flow objectives adopted by the SWRCB in the May 1995 WQCP.

A second settlement agreement was developed in Phase 8 of the water rights hearings to allocate responsibility for meeting the 1995 Delta Water Quality Control Plan (WQCP) objectives. Water suppliers in the Sacramento Valley worked with the Department of Water Resources (DWR), US Bureau of Reclamation (USBR), and the Downstream Water Users to develop the **Sacramento Valley Water Management Program**. This involved development of groundwater supplies in the Sacramento Valley that would allow reduced upstream diversions from the Sacramento River at certain times to help DWR and Reclamation to meet Delta standards. On the basis of this settlement agreement, the SWRCB dismissed Phase 8 of the Bay-Delta Hearings (January 2003). However, the groundwater program was never implemented.

The third example is the September 2006 **San Joaquin River Restoration Settlement** which settled an 18-year lawsuit to provide sufficient flows and fish habitat in the San Joaquin River below Friant Dam. However, 10 years later this settlement agreement still has not resulted in

any significant and sustained flow releases. The impending change in the federal administration is likely to further delay implementation of this Restoration Settlement.

The SWRCB should not accept any settlement agreements that do not guarantee achievement of the SWRCB's proposed flow objectives or achievement of the corresponding ecosystem goals and objectives.

7. The revised SED should discuss Areas of Concern and how they have been addressed

Contra Costa County has previously submitted three focused comment letters to State Board on the proposals for San Joaquin River tributary flows, and South Delta salinities.

1. Contra Costa County comments on the San Joaquin River and South Delta Salinity Draft Technical Report, December 6, 2010 (Signed by Roberta L. Goulart)
2. Southern Delta Ag and Flow Revised Notice of Preparation, May 23, 2011 (signed by John Greitzer)
3. Contra Costa County Water Agency Comments on the Draft Substitute Environmental Document for the Bay Delta WQCP, March 28, 2013 (signed by John Greitzer)

Although the draft revised SED includes an appendix summarizing comments received (Appendix M), the SED does not address areas of concern or discuss why focused comments and suggestions by commenters, including Contra Costa County, have not been considered. The next version of the SED should discuss Areas of Concern and describe how the Board has addressed those concerns or why those concerns and focused suggestions were ignored.